

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ISELA SOTO, as Personal Representative
of the Estate of JAVIER JOSE SOTO, Decedent,

Plaintiff

v.

CIV 10-1104 KBM/GBW

DOÑA ANA COUNTY, DOÑA ANA COUNTY
SHERIFF'S OFFICE, DOÑA ANA COUNTY
SHERIFF'S DEPUTY ERIC LOPEZ, individually
and in his official capacity, VILLAGE OF HATCH,
VILLAGE OF HATCH POLICE DEPARTMENT,
and VILLAGE OF HATCH POLICE OFFICER
MIKE VEGA, individually and in his official capacity,

Defendants.

ORDER ON THE COUNTY DEFENDANTS'
MOTION FOR JUDGMENT ON THE PLEADINGS

THIS MATTER comes before the Court on the County Defendants' Motion for Judgment on the Pleadings, filed January 18, 2011 (*Doc. 13*) ("Motion"). Pursuant to 28 U.S.C. § 636(c) and FED.R.CIV.P. 73(b), the parties consented to have me serve as the presiding judge and enter final judgment. *See Docs. 5, 6, 7*. The Court has carefully reviewed the parties' submissions and the relevant authorities and finds as follows:

(1) Plaintiff agrees that Counts IV, V, and VI are alleged solely against Defendant Village of Hatch. *Response to County Defendants' Motion for Judgment on the Pleadings* at ¶ 4, filed February 15, 2011 (*Doc. 27*) ("Response");

(2) Plaintiff concedes that all claims should be dismissed against Defendant Doña Ana County Sheriff's Office because "the Sheriff's Office is simply a division of the County of Doña Ana County" and, as such, cannot qualify as a "person" under Section 1983." *See* Response at ¶ 3;

(3) Plaintiff also agrees dismissal is appropriate as to all claims Counts III, VII, and VIII. *See* Response at ¶ 6; and

(4) The County Defendants' arguments as to the Section 1983 claims in Counts I and II against Defendant Eric Lopez in his individual capacity are better addressed in the context of the pending motion for summary judgment (*Doc. 11*).

Wherefore,

IT IS HEREBY ORDERED that the County Defendants' Motion for Judgment on the Pleadings (*Doc. 13*) is **granted in part**. All claims against Defendants Doña Ana County and Doña Ana County Sheriff's Office are **dismissed with prejudice**. The conspiracy claim in Count III is also **dismissed with prejudice**. In all other respects, the motion is **denied**.

IT IS FURTHER ORDERED that in light of these rulings, the caption no longer refer to Doña Ana County and Doña Ana County Sheriff's Office.


UNITED STATES MAGISTRATE JUDGE
Presiding by Consent